

	No notices required, advised in open court.	<div style="text-align: center;"> <p>INVESTIGATION</p> <p>ST. LOUIS, MO</p> </div>	number of notices	<div style="text-align: center;"> <p>Document Number</p> <p>24</p> </div>
	No notices required.		FEB 18 2003	
	Notices mailed by judge's staff.		date docketed	
	Notified counsel by telephone.		docketing deputy initials	
✓	Docketing to mail notices.		date mailed notice	
✓	Mail AO 450 form.		mailing deputy initials	
	Copy to judge/magistrate judge.			
WAH	courtroom deputy's initials	Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

HELLER FINANCIAL, INC., a Delaware  
corporation, )

Plaintiff, )

vs. )

2500 PEACHTREE ASSOCIATES, LLC, et al., )

Defendants. )

No. 02 C 3859

MEMORANDUM OPINION AND ORDER

From time to time this court is called upon to make a determination that has virtually no likelihood of having any practical significance but which is necessary to bring closure to the dispute. This is such an occasion.

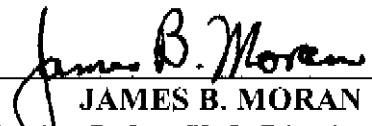
Defendants Akhavan, Gunter, Kelley and Urban Holdings, LLC ("present defendants") executed a guaranty in favor of plaintiff related to a loan for the development of a condominium project. The project apparently encountered difficulties – it was never completed. Plaintiff sought to recover on the guaranty and it obtained a judgment of \$3.5 million against each of the present defendants. It appears that plaintiff's likelihood of collection of those judgments ranges from slim to none.

Still, plaintiff also had a right under the guaranty to recover the cost of completion of the project even though it chose not to complete the project. That cost was estimated to be \$2,405,619. Plaintiff now seeks a judgment on that amount from the present defendants because its losses on the loan far exceeded the \$3.5 million drawn on a letter of credit from a senior lender, the basis of the prior judgments.

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One defendant, Kelley, characterizes that recovery as an unenforceable penalty, but it is not. When the project went into bankruptcy plaintiff could have completed the project at its expense, hoping that it could more than recover the added investment by its recovery as a creditor from the sale of the condominium project as a completed asset of the bankrupt estate. But it did not need to take that risk. It could, instead, refuse to advance further funds and confine its recovery to its share as a creditor in the proceeds from the sale of the incomplete project, an amount which obviously would be less than the value of a completed project. That is the course it chose to pursue. The guaranty permitted plaintiff to elect to complete the project, with that amount recoverable from the guarantors, with the hope but without the certainty that the funds advanced would be more than covered by an increase in its share in bankruptcy, or to forego that option and settle for a lesser recovery in bankruptcy. That was an election plaintiff had a right to make in its effort to minimize its losses. We enter judgment for plaintiff and against the present defendants in the amount of \$2,405,619.

Feb. 17, 2003.

  
JAMES B. MORAN  
Senior Judge, U. S. District Court